D.B. CIVIL SPECIAL APPEAL (W) NO.796/06
(Smt. Chandu Devi Vs. Board of Revenue & Ors.)

Date of order : 13.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.S. Choudhary, for the appellant.

Having heard learned counsel for the appellant, we are of the opinion that no case for entertaining this appeal is made out.

The appellant had been allotted .08 bighas land in command area as small patch vide order of Sub-Divisional Magistrate (Revenue), Nohar dated 23.11.2001. The order of the allotment of small patch of land was challenged by way of appeal before the Revenue Appellate Authority by Gram Pachanat and Head Master, Government Secondary School, Gram Panchayat Karanpura. During the pendency of that appeal, the present appellant, who was respondent in the said appeal, moved an application alongwith an order passed in appeal No.54/2001/75 passed by the Revenue Appellate Authority in an appeal against very same order filed by Gyan Singh, against Smt. Chandu Devi, rejecting the appeal with a request that the aforesaid judgment operates as res judicata for deciding same issue again in the appeal by the Revenue Appellate

Authority.

The Revenue Appellate Authority took the application and judgment on record and placed the appeal for final hearing vide order dated 4.5.2006 which order has been challenged by way of SB Civil Writ Petition No.5885/2006.

The learned Single Judge noticing that the application has to be heard at the time of final hearing, no interference is called for, dismissed the writ petition. This has led to this appeal.

Apart from the fact that the order of the Revenue Appellate Authority was not liable to be interfered with, there is no ground for exercising extra ordinary jurisdiction, we are further of the opinion that prima facie on reading of the application, no case for res judicata is made out. As per the information emanating from the application, the judgment was rendered between Gyan Singh and Smt. Chandu Devi. Said Gyan Singh is not party to the original proceedings. Prima facie since the decision in appeal was not between the same parties, it cannot bind the parties litigating under different title in another appeal. Moreover, it appears that against the very same order Gyan Singh was prosecuting his own case but the pending appeal has been preferred by the State of Rajasthan and Government Secondary School,

which is a public institution. Their case rests on entirely different ground of public interest. Therefore, even the perusal of the application goes to show that the principle of res judicata has wrongly been sought to be invoked. May be it is within the domain of the appellant to contend that since in an appeal filed by another persons, the allotment made in favour of the appellant has been sustained. Therefore, in the appeal filed by the present respondent, the same result may follow unless other circumstances appear for challenging the order.

Be that as it may, the appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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